

THEODORE E. BACON (CA Bar No. 115395)
tbacon@AlvaradoSmith.com
MARY MICHELENA MONROE (CA Bar No. 143734)
mmonroe@AlvaradoSmith.com
ALVARADOSMITH
A Professional Corporation
633 W. Fifth Street, Suite 1100
Los Angeles, CA 90071
Tel: (213) 229-2400
Fax: (213) 229-2499

Attorneys for Defendant
LOCAL INITIATIVE HEALTH
AUTHORITY FOR LOS ANGELES
COUNTY, operating and doing business
as L.A. CARE HEALTH PLAN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DORIS GOMEZ,
Plaintiff

v.

L.A. CARE HEALTH PLAN, and DOES
1-10, Inclusive,

Defendants.

CASE NO.: 2:15-cv-04621-DSF-AJW

JUDGE: Hon. Dale S. Fischer

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFF'S THIRD
CAUSE OF ACTION FOR
WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
AND MOTION TO STRIKE
PUNITIVE DAMAGES AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Filed concurrently with Declaration of Mary M. Monroe, Request for Judicial Notice and [Proposed] Order]

Date: August 3, 2015
Time: 1:30 p.m.
Courtroom: "840"

Edward R. Roybal Federal Building
255 E. Temple Street
Los Angeles, CA 90012

Complaint Filed: April 30, 2015

1 **TO THE HONORABLE COURT AND TO PLAINTIFF AND HER COUNSEL**
2 **OF RECORD HEREIN:**

3 **PLEASE TAKE NOTICE** that on August 3, 2015 at 1:30 p.m., or as soon
4 thereafter as this matter may be heard in Courtroom 840 of the above-entitled court
5 located at 312 North Spring Street, Los Angeles, California 90012, defendant Local
6 Initiative Health Authority For Los Angeles County, operating and doing business as
7 L.A. Care Health Plan (erroneously named as "L.A. Care Health Plan") (hereinafter
8 "Defendant" or "L.A. Care") will and hereby does move to dismiss the third cause of
9 action of the complaint for wrongful termination in violation of public policy pursuant
10 to Federal Rules of Civil Procedure ("FRCP") Rule 12(b)(6) on the grounds that the
11 third cause of action fails to state a claim upon which relief can be granted. Further,
12 L.A. Care will and hereby does move to strike all allegations for punitive damages
13 pursuant to FRCP Rule 12(f).

14 This motion is based on the following grounds:

15 1. Plaintiff's claim for Wrongful Termination in Violation of Public Policy
16 should be dismissed because L.A. Care is a public agency organized pursuant to
17 Welfare and Institutions Code §14087.96, et seq. and as such is immune from liability
18 arising out of common law tort claims under California Government Code §815.

19 2. Plaintiff's claim for punitive damages should be stricken because as a
20 public entity, L.A. Care is not subject to punitive damages under California
21 Government Code §818 and punitive damages are not available under the Family
22 Medical Leave Act ("FMLA").

23 This motion is made in compliance with the conference of counsel
24 requirements as set forth in Local Rule 7-3. On June 18, 2015, the same date that the
25 Notice of Removal was filed, Counsel for L.A. Care sent a letter by facsimile and
26 U.S. mail to counsel for Plaintiff advising him of L.A. Care's intent to move to
27 dismiss the third cause for wrongful termination in violation of public policy for
28 failure to state a claim and motion to strike Plaintiff's claim for punitive damages and

1 generally set forth the legal authority L.A. Care intends to rely on to support this
2 Motion. The letter requested a response no later than June 23. Plaintiff's counsel did
3 not respond to the letter. On June 24, 2015, L.A. Care's counsel left voicemail
4 messages for the two attorneys identified on Plaintiff's complaint and asked for a call
5 back to discuss the meet and confer but received no return call. L.A. Care therefore
6 files this Motion to Dismiss and Motion to Strike (the "Motion").

7 The Motion will be based on this Notice of Motion and Memorandum of Points
8 and Authorities in Support Thereof, the Declaration of Mary Michelena Monroe filed
9 concurrently herewith, the Request for Judicial Notice filed concurrently herewith,
10 and all documents, records, and pleadings on file, and any evidence and/or oral
11 argument presented at the time of hearing on this matter.

12
13 DATED: June 25, 2015

ALVARADOSMITH
A Professional Corporation

14
15 By: /s/ Mary Michelena Monroe
16 THEODORE E. BACON
17 MARY MICHELENA MONROE
18 Attorneys for Defendant
19 LOCAL INITIATIVE HEALTH
20 AUTHORITY FOR LOS ANGELES
21 COUNTY, OPERATING AND DOING
22 BUSINESS AS L.A. CARE HEALTH
23 PLAN
24
25
26
27
28

1
2
3
TABLE OF CONTENTS

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. LEGAL STANDARD FOR A MOTION TO DISMISS	2
III. PLAINTIFF CANNOT ASSERT THE COMMON LAW CLAIM FOR WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY AGAINST A PUBLIC ENTITY	2
IV. LEGAL STANDARD FOR A MOTION TO STRIKE PUNITIVE DAMAGES	3
V. PLAINTIFF IS NOT ENTITLED TO PUNITIVE OR EXEMPLARY DAMAGES FROM A PUBLIC ENTITY	3
VI. CONCLUSION	4

ALVARADO SMITH
A PROFESSIONAL CORPORATION
LOS ANGELES

TABLE OF AUTHORITIESPage(s)**Cases**

<i>Anthoine v. North Central Counties Consortium</i> , 605 F. 3d 740, 754 (9 th Cir. 2010).....	2
<i>Balisteri v. Pacifica Police Dept.</i> , 901 F. 2d 696, 699 (9 th Cir. 1990).....	2
<i>Estate of Migliaccio v. Midland Nat'l Life Ins. Co.</i> , 436 F. Supp. 2d 1095, 1100 (C.D. Cal. 2006)	3
<i>Henrikson v. Turbomeca</i> , 2006 WL 3929541 at *2 (E.D. Cal. 2006).....	3
<i>Miklosy v. Regent of the University of California</i> , 44 Cal. 4 th 876, 898-99 (2008)	2
<i>Navarro v. Block</i> , 250 F. 3D 729, 732 (9 th Cir. 2001).....	2
<i>Xin Liu v. Amway Corp.</i> , 347 F.3d 1125, 1133 (9th Cir. 2003).....	4

Statutes

29 U.S.C. § 2617(a)	2, 4
Federal Rules of Civil Procedure Rule 12(b)(6).....	1, 2
Federal Rules of Civil Procedure Rule 12(f)(2)	1
Government Code §815(a).....	2
Government Code §818	1, 2, 3

Other Authorities

Family Medical Leave Act (“FMLA”)	2
Welf. & Inst. Code §14087.9605(a)	1
Welf. & Inst. Code §14087.9605(b)	1, 3
Welf. & Inst. Code §14087.9605(b)(1)	1

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Local Initiative Health Authority For Los Angeles County, operating and doing business as L.A. Care Health Plan (hereinafter “Defendant” or “L.A. Care”) hereby moves this Court for an order dismissing the third cause of action of Plaintiff Doris Gomez’s Complaint, which seeks recovery for wrongful termination in violation of public policy, pursuant to Federal Rules of Civil Procedure (“FRCP”), Rule 12(b)(6) for failure to state a cause of action upon which relief can be granted. L.A. Care further moves to strike Plaintiff’s improper request for punitive damages against defendant, a public entity, pursuant to FRCP 12(f)(2).

I. INTRODUCTION

L.A. Care is a public agency pursuant to the authority vested by Cal. Welf. & Inst. Code 14087.9605, organized “to meet the problems of delivery of publicly assisted medical care in the county and demonstrate ways of promoting quality care and cost efficiency.” Cal. Welf. & Inst. §14087.9605(a). See also, Request for Judicial Notice filed concurrently herewith. In creating L.A. Care, the legislature provided that it would be considered a public entity and be protected by the immunities applicable to public entities and public employees (commencing with section 814 of the Government Code). *See* Cal. Welf. & Inst. §14087.9605(b)(1).

On April 30, 2015, Doris Gomez, a former employee of L.A. Care, filed a complaint alleging (1) disability discrimination in violation of the FEHA; (2) failure to prevent disability discrimination in violation of the FEHA; (3) wrongful termination in violation of public policy of FEHA; and (4) failure to provide reasonable accommodation in violation of the FEHA. *See* Request for Judicial Notice, Exh. 1. Plaintiff seeks punitive damages, among other relief. *Id.* L.A. Care denies Plaintiff's claims. L.A. Care removed the action on June 18, 2015. *See* Req. for Judicial Notice, Exh. 2.

Plaintiff's common law cause of action for wrongful termination in violation of public policy of FEHA must be dismissed because, as a public entity, L.A. Care is not

1 liable for common law torts. *See*, Cal. Gov't Code §815(a). Additionally, Plaintiff's
 2 prayer for punitive damages must be stricken as punitive damages may not be
 3 awarded against a public entity and punitive damages are not available under FMLA.
 4 Gov't Code §818; 29 U.S.C. § 2617(a).

5 **II. LEGAL STANDARD FOR A MOTION TO DISMISS**

6 A motion to dismiss under Federal Rule of Civil Procedure §12(b)(6)
 7 (hereinafter "Rule 12(b)(6)") may be brought when a Plaintiff fails to state a claim
 8 upon which relief can be granted. Rule 12(b)(6) specifically "tests the legal sufficiency
 9 of a claim." *Navarro v. Block*, 250 F. 3D 729, 732 (9th Cir. 2001). Dismissal is proper
 10 under Rule 12(b)(6) where there is no cognizable legal theory or an absence of
 11 sufficient facts alleged to support a cognizable legal theory. *Id.* Thus, the Court should
 12 grant a motion to dismiss where a set of facts pleaded in the complaint, if true, would
 13 not entitle plaintiff to relief. *Balisteri v. Pacifica Police Dept.*, 901 F. 2d 696, 699 (9th
 14 Cir. 1990).

15 **III. PLAINTIFF CANNOT ASSERT THE COMMON LAW CLAIM FOR**
 16 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
 17 **AGAINST A PUBLIC ENTITY**

18 In her third cause of action, Plaintiff seeks damages on the grounds that L.A.
 19 Care allegedly violated "the public policy of the state of California that an employer
 20 not discharge or otherwise discriminate against an employee because of his or her
 21 disability." Req. for Judicial Notice, Exh. 1, 6:15-16. Plaintiff claims that she was
 22 terminated while she was out on approved medical leave and thus is entitled to
 23 damages. *Id.* at 6:17-7:5.

24 The California Supreme Court has held that "a state common law claim for
 25 wrongful termination in violation of public policy, known as a Tameny action, cannot
 26 be brought against a public entity." *Anthoine v. North Central Counties Consortium*,
 27 605 F. 3d 740, 754 (9th Cir. 2010) citing *Miklosy v. Regent of the University of*
 28 *California*, 44 Cal. 4th 876, 898-99 (2008). "Except as otherwise provided by statute:

1 ... a public entity *is not liable* for an injury, whether such injury arises out of an act or
 2 omission of the public entity or a public employee or any other person....This section
 3 *abolishes all common law or judicially declared forms of liability for public entities*,
 4 except for such liability as may be required by the state or federal constitution....”
 5 *Miklosy*, 44 Cal. 4th at 898-99 (emphasis added). Since plaintiff may not bring the
 6 claim for wrongful termination in violation of public policy against L.A. Care,
 7 Plaintiff’s third cause of action for wrongful termination in violation of public policy
 8 must be dismissed for failure to state a claim.

9 **IV. LEGAL STANDARD FOR A MOTION TO STRIKE PUNITIVE**
 10 **DAMAGES**

11 A motion to strike may be used to remove improper requests for damages,
 12 including punitive damages when the requested damages are unavailable as a matter
 13 of law. *See Estate of Migliaccio v. Midland Nat'l Life Ins. Co.*, 436 F. Supp. 2d 1095,
 14 1100 (C.D. Cal. 2006). “Motions to strike for certain types of relief, such as punitive
 15 and compensatory damages, are generally granted if such relief is not recoverable
 16 under the applicable law.” *Henrikson v. Turbomeca*, 2006 WL 3929541 at *2 (E.D.
 17 Cal. 2006) (citation omitted).

18 **V. PLAINTIFF IS NOT ENTITLED TO PUNITIVE OR EXEMPLARY**
 19 **DAMAGES FROM A PUBLIC ENTITY**

20 California Government Code §818 specifically provides that “notwithstanding
 21 any other provision of the law, a public entity is not liable for damages awarded under
 22 section 3294 of the Civil Code or other damages imposed primarily for the sake of
 23 example and by way of punishing the defendant.” L.A. Care is organized pursuant to
 24 Cal. Welf. & Inst. Code §14087.9605(b) which explicitly provides that the
 25 commissions created under its authority are “protected by the immunities applicable
 26 to public entities ...commencing with [Gov’t Code] section 814.” Thus, punitive
 27 damages must be stricken with respect to the state law claims.

28 Further, the Family and Medical Leave Act only provides for compensatory

1 damages and not punitive damages. 29 U.S.C. § 2617(a); *Xin Liu v. Amway Corp.*,
2 347 F.3d 1125, 1133 (9th Cir. 2003). Accordingly, this Court should grant L.A.
3 Care's motion to strike Plaintiff's punitive damages claims based on state and federal
4 law.

5 **VI. CONCLUSION**

6 Based on the foregoing, L.A. Care respectfully requests that this Court grant its
7 motion to dismiss the third cause of action for wrongful termination in violation of
8 public policy on the grounds that it fails to state a claim and strike the allegations of
9 punitive damages which are not recoverable under either state or federal law.

10
11 DATED: June 25, 2015

12 ALVARADOSMITH
13 A Professional Corporation

14 By: /s/ Mary Michelena Monroe
15 THEODORE E. BACON
16 MARY MICHELENA MONROE
17 Attorneys for Defendant
18 LOCAL INITIATIVE HEALTH
19 AUTHORITY FOR LOS ANGELES
20 COUNTY, operating and doing business
21 as L.A. CARE HEALTH PLAN

22
23
24
25
26
27
28
ALVARADOSMITH
A PROFESSIONAL CORPORATION
LOS ANGELES